

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4512 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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R.V. PATHAK

Versus

DIST DEVELOPMENT OFFICER  
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Appearance:

MR KB PUJARA for Petitioner  
MR YN OZA for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/06/1999

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution the petitioner has challenged the action of the respondent no.1, District Development Officer, Ahmedabad District Panchayat, in seeking to revert the petitioner from the post of Deputy Accountant to the post of Senior Clerk, by the impugned order dated 19th August 1985 at Annexure-D to the petition.

2 While issuing notice on the petition, this Court had granted ad interim relief restraining the respondents from implementing the impugned order of reversion dated 19th August 1985 at Annexure-D to the petition. Thereafter the petition was admitted and the ad interim relief was continued as interim relief.

3 The impugned order dated 19th August 1995 (Annexure-D) states that the recruitment rules for the post of Deputy Accountant provide for appointment to the post by direct recruitment as well as by promotion in a certain ratio and that the direct recruits for the post being available, the petitioner (Mr R.V. Pathak) was to be reverted to the lower cadre of Senior Clerk. By another order of even date, at Annexure-E to the petition, the first respondent appointed Mr M.M.Makwana, Deputy Accountant, Panchmahals District Panchayat, on the post which was to fall vacant upon the reversion of the petitioner. In the present petition the petitioner has challenged the order at Annexure-D on the ground that the petitioner could not have been sought to be reverted in order to make room for a Deputy Accountant from another district panchayat. It is contended that the executive committee of the Ahmedabad District Panchayat had already decided as far back on 31st December 1969 by Resolution No.218 that by taking an employee from another panchayat on deputation, the seniority of the employees working under the Ahmedabad District Panchayat will be affected and therefore the DDO of Ahmedabad District Panchayat should inform that the concerned employee from Surendranagar District Panchayat could not be taken on deputation. It is therefore submitted in the petition that since the District Panchayat has adopted such a stand even in the matter of deputation, Mr M.M.Makwana could not have been brought to the Ahmedabad District Panchayat on permanent basis and thereby create a situation requiring the petitioner's reversion from the cadre of Deputy Accountants.

4 There appears to be some substance in the contention of the petitioner that the petitioner could not have been reverted to bring an employee of another District Panchayat to the Ahmedabad District Panchayat.

Though the impugned order at Annexure-D purports to revert the petitioner on the ground that a direct recruit is available and ratio is required to be maintained between direct recruits and promotees as per the recruitment rules the order was really passed to bring Mr M.M.Makwana to the Ahmedabad District Panchayat. The order must be held to be arbitrary and in violation of the petitioner's fundamental rights under Articles 14 and 16 of the Constitution inasmuch as Mr Makwana who was sought to be appointed vice the petitioner was not a person directly recruited by the Ahmedabad District Panchayat but was an employee of the Panchmahals District Panchayat and was sought to be transferred to the Ahmedabad District Panchayat.

5 Though the petition is pending since 1985, no affidavit in reply has been filed by the respondents. In view of the fact that though more than 13 years have already rolled by, Mr M.M.Makwana who was to replace the petitioner has not come forward for being joined as a party-respondent, it would be reasonable to presume that Mr Makwana must have been posted elsewhere. In any case, since Mr Makwana was not joined as a party-respondent, this Court would not go into the question of legality or otherwise of the order dated 19th August 1985 at Annexure-E to the petition by which Mr Makwana was appointed as a Dy. Accountant under the Ahmedabad District Panchayat.

6 In the facts and circumstances of the case and particularly in view of the passage of almost 14 years this Court disposes of the present petition after quashing the impugned order dated 19th August 1985 at Annexure-D to the petition with liberty to the first respondent - District Panchayat to consider the matter afresh on the basis of the situation prevailing now in 1999 and pass appropriate orders in accordance with law after giving the petitioner and other affected persons(s) an opportunity of being heard.

10 In view of the aforesaid directions, this petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

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(mohd)